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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D. C. 20536

File: LIN O2 097 52993

Office: Nebraska Service Center

Date: JUL 09 2003

IN RE: Applicant:

Application:

Application for Travel Document Pursuant to Section 223  
of the Immigration and Nationality Act, 8 U.S.C. § 1203

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

**PUBLIC COPY**

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

*Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Nebraska Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be rejected. The decision of the director will be withdrawn and the matter will be remanded to him for further consideration and action.

The applicant, a native and citizen of Russia, seeks to obtain a reentry permit under section 223 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1203. The director denied the application, finding that the applicant had received lawful permanent residence on a conditional basis, had failed to submit a petition to remove the conditions on that status, and was therefore ineligible for issuance of the document requested.

On appeal, the applicant submits a letter from her spouse indicating that the couple was unaware of a need to file a petition to remove the conditions on the applicant's conditional status because they thought that the applicant was a permanent resident, not a conditional permanent resident.

The regulations at 8 C.F.R. § 223.2(b)(1) allow for the approval of a reentry permit if the application (Form I-131) is filed by a person who is in the United States at the time of application, and is a lawful permanent resident or conditional permanent resident.

With regard to general procedures for the filing of petitions to remove conditions on conditional resident status, the regulations at 8 C.F.R. § 216.4(a)(1) state, in pertinent part:

. . . Within the 90-day period immediately preceding the second anniversary of the date on which the alien obtained permanent residence, the alien and the alien's spouse . . . must file a Petition to Remove the Conditions on Residence (Form I-751). . . . Upon receipt of a properly filed Form I-751, the alien's conditional permanent residence status shall be extended automatically, if necessary, until such time as the director has adjudicated the petition.

With regard to late filing of petitions to remove conditions on conditional resident status, the regulations at 8 C.F.R. § 216.6 state, in pertinent part:

. . . Form I-751 may be filed after the expiration of the 90-day period only if the alien establishes to the satisfaction of the director, in writing, that there was good cause for the failure to file Form I-751 within the required time period. . . .

The record reflects that the applicant was admitted to the United States as a returning resident, SB-1, on December 16, 2001. At that time, a stamp was placed in her passport as temporary evidence of her lawful admission, valid through December 16, 2002. On January 2, 2002, the applicant applied for a reentry permit to depart the

United States on January 6, 2002 in order to join her spouse, a citizen of the United States working in the Netherlands.

Service instructions at O.I. 103.3(c) provide, in part, that the record of proceeding must contain all evidence used in making the decision, including any investigative reports and/or other derogatory information. As constituted, the record fails to contain any information to support the director's finding that the applicant was a conditional resident who failed to submit a petition to remove the conditions on that status. Therefore, the district director's decision in the matter is withdrawn.

The appeal of the district director's decision will be rejected, and the record remanded to him so that he can adjudicate the case and enter a new decision based on documentation contained in a record of proceeding which can be properly reviewed by the AAO. If that decision is adverse to the applicant, the director will certify his decision to the AAO for review accompanied by a properly prepared record of proceeding.

**ORDER:** The appeal is rejected. The director's decision is withdrawn. The matter is remanded to the director for further action consistent with the foregoing discussion and entry of a new decision which, if adverse to the applicant, is to be certified to the AAO for review.